IN THE

# Supreme Court of the United States

October Term, 1951

No. 543

ON LEE,

*Petitioner,*

*against*

UNITED STATES OF AMERICA,

*Respondent.*



On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

## PETITION FOR REHEARING

GILBERT S. ROSENTHAL,
*Counsel for Petitioner.*

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## PETITION FOR REHEARING

Now comes the petitioner, On Lee, and respectfully prays that this Honorable Court grant rehearing of its Order of June 2nd, 1952 affirming the judgment of conviction of the petitioner herein.

The petitioner respectfully submits that the Court's Opinion delivered by Mr. Justice Jackson discloses that the majority of the Court in considering and deciding the writ of certiorari in the within case failed to consider or was mistaken in considering the following:

At page 2 of the Opinion of the Court there is mention of the fact that damaging admissions were "audited" by

Agent Lee during a conversation held upon the sidewalk between Chin Poy and petitioner. At page 185 of the record it definitely appears that Agent Lee referred only to the conversation of March 30th, 1950, which was not a street conversation but was one held at petitioner's combined home and place of business.

At page 4 of the Opinion of the Court reference is made to *Goldman* v. *United States*, 316 U. S. 129 and it is stated that this Court ruled on the action of federal agents placing a detectaphone on the outer wall of defendant's *hotel room*. Such is not the case. The detectaphone and dictaphone discussed in the *Goldman* case, were used in respect to the defendant's *place of business*, the office of the defendant, a lawyer. It is respectfully submitted that no distinction should be made between places of business, whether it be a law office or a laundry; for presumably an attorney maintaining an office welcomes the general public to come to his office to consult him on business and the prospective retaining of him as a lawyer just as a laundryman welcomes a prospective laundry customer. Too, a lawyer may, and frequently does, reject the proffered case or retainer and a laundryman may, and often does, reject proffered business.

Nowheres in the Opinion of the Court does it appear that this Honorable Court considered the fact that the only "evidence" offered at the trial concerning the visits of Chin Poy to petitioner's place in Hoboken and the circumstances under which he was received was the testimony of the petitioner. Quotations of this testimony appear at pages 20 and 21 of the original Brief for Petitioner used upon the argument of this case and containing quotes from pages 295 and 298 of the record.

A quotation also appears at page 20 of the aforementioned Brief of the comment of the Trial Court as to the circumstances of Chin Poy's visits to petitioner, and this quotation was taken from page 296 of the record.

It is respectfully submitted that the reading of these portions of the record completely nullifys the statement contained within the Opinion of the Court that "Chin Poy entered a place of business with the consent, if not the implied invitation, of the petitioner."

At page 8 of the Court's Opinion, the learned Justice, delivering same, *speculates* "on the reasons why Chin Poy was not called" and proceeded to express the thought that the testimony of Agent Lee undoubtedly would be found by the jury to have more probative value than the word of Chin Poy. The inherent viciousness of the practice indulged in by the Government in this case in attempting to substitute the testimony of a Government agent in place of the person actually used to confront the petitioner becomes apparent when it is learned that shortly after the trial of the within case federal narcotic Agent Lee was either forced to or permitted to resign from the service of the Treasury Department for acts committed by him which were considered and found to be improper and inimical to the best interest of the Treasury Department. Or, to borrow the phrase so frequently used, he left the service "for the good of the service." Since then the United States Attorney for the Southern District has dismissed all indictments, proof of which depended upon Agent Lee's testimony.

Thus it appears that what the Court's Opinion calls an argument resting solely on the proposition that the Government should be arbitrarily penalized for the low morals of its informers and what Justice Frankfurter's dissenting

opinion states makes for lazy and not alert law enforcement and places a premium on force and fraud reaches its full fruit and fulfills the prophesies contained within both opinions.

Surely no member of this Honorable Court is so naive as to believe that law enforcement agents who are constantly in the news and public prints of today and of the past for having taken bribes and money to overlook and ignore the indiscretions and crimes of members of our society would not also be so low as to "frame" and falsely accuse a victim who has fallen into their toils.

The "cashiering" of federal narcotic Agent Lee subsequent to petitioner's trial definitely establishes the wisdom of protecting a defendant from this type of testimony, and the acts of the Government should not be sanctioned with the old saw that "the end justifies the means."

## Conclusion

**It is respectfully submitted that the within application for rehearing should be granted.**

Respectfully submitted,

GILBERT S. ROSENTHAL,
*Counsel for Petitioner.*

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I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

GILBERT S. ROSENTHAL,
*Counsel for Petitioner.*